



FH [REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/168946

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kewaunee County Department of Social Services in regard to Medical Assistance, a hearing was held on November 05, 2015, at Kewaunee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$480.83 in BadgerCare (BC) Plus benefits from June 1, 2015 to July 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jodi Zimmerman

Kewaunee County Department of Social Services
810 Lincoln Street
Kewaunee, WI 54216

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kewaunee County. The petitioner is the only person in her household.
2. On August 25, 2015 the agency sent the petitioner a notice stating that she was overpaid \$480.83 in BC Plus benefits from June 1, 2015 to July 31, 2015.
3. The petitioner applied for BC Plus benefits on November 10, 2014. On December 9, 2014 the agency sent the petitioner a notice stating that her application was approved, and that she would receive BC Plus coverage effective November 1, 2014. The notice went on to state that if the

household's total monthly income before taxes went over \$972.50, the household had to report the increase in income by the 10th day of the next month.

4. The petitioner's monthly gross income in April 2015 was \$984.63. In May 2015 the petitioner failed to report her income was above the reporting requirement. The petitioner continued to receive BC Plus coverage in June and July 2015. The petitioner's gross income in June 2015 was \$1,162.82. In July 2015 her gross income was \$2,228.14.
5. The agency paid \$430.83 for the petitioner's BC Plus coverage in June and July 2015. \$372.94 was the net capitation. The net paid amount was \$57.89 for a total cost of \$430.83.
6. On September 25, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Childless adults are financially eligible for BC Plus if their income is below 100% of the Federal Poverty Level (FPL). BC+ Handbook, Appendix 16.1.1. For household size of one, 100% FPL in April and May 2015 was \$972.50.

The overpayment in this case was caused when the petitioner's income went above \$972.50. Her income increased above this level in April 2015. She had until May 10, 2015 to report her increase in income. She failed to report this increase until June 2015. Had she timely reported in May 2015, she would have been ineligible for BC Plus benefits in June and July 2015. The petitioner continued to receive BC Plus coverage in June and July 2015.

The petitioner argues that she reported her new employment in May 2015. I do not find this testimony credible. The petitioner thought that she reported in May 2015, and stated that she reported on the access website. The agency did not receive any report change through access in May 2015. Another factor weighing against the petitioner's credibility is that the agency testified she reported her new job on June 8, 2015. If she had reported this change through access in May 2015, she would not have re-reported and re-verified in June.

The amount listed on the overpayment notice does not match the net capitation and net paid amount presented at hearing. The amount on the overpayment notice is \$480.83. The net capitation and net paid amount presented at hearing is \$430.83. I did not receive a notice listing the correct overpayment amount of \$430.83.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid \$430.80 in BadgerCare (BC) Plus benefits from June 1, 2015 to July 31, 2015

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instructions to send a new overpayment notice reflecting the correct overpayment amount of \$430.83. The agency shall comply with this order within 10 days from the date of decision. If the agency has already issued an overpayment notice that reflects the correct overpayment amount of \$430.83, the agency may disregard this order. This appeal is dismissed in all other respects.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

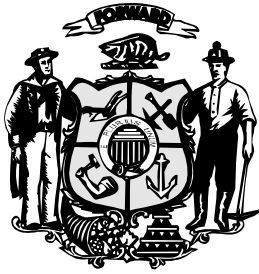
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of December, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 4, 2015.

Kewaunee County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability